

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CONSOLIDATED MISC. CIVIL CAUSE NO. 49 OF 2002

AND

MISC. CIVIL CAUSE NO. 254 OF 2003

IN THE MATTER OF THE COMPANIES ORDINANCE CAP 212

AND

IN THE MATTER OF THE COMPANIES WINDING UP RULES, 1929

AND IN THE MATTER OF A PETITION FOR WINDING UP
INDEPENDENT POWER TANZANIA LTD (IPTL)

AND IN THE MATTER OF AN APPLICATION BY M/S LAW
ASSOCIATES ADVOCATES- THE CREDITOR OF IPTL OBJECTING
WITHDRAWAL OF THE WINDING UP PETITION AND
DISCHARGE/RELEASE OF THE PROVISIONAL LIQUIDATOR

BETWEEN

VIP ENGINEERING AND MARKETING LTD (VIP) PETITIONER

AND

1. INDEPENDENT POWER TANZANIA
LTD (IPTL).....1ST RESPONDENT
2. MECHMAR CORPORATION
(MALAYSIA) BERHAD 2ND RESPONDENT
3. THE ADMINISTRATOR GENERAL/OFFICIAL
RECEIVER AND PROVISIONAL LIQUIDATOR
OF IPTL 3RD RESPONDENT

AND BETWEEN

LAW ASSOCIATES, ADVOCATES,

THE CREDITOR APPLICANT- -

AND

1. VIP ENGINEERING AND MARKETING LTD (VIP) 1ST RESPONDENT
2. THE ADMINISTRATOR GENERAL/ OFFICIAL RECEIVER AND PROVISIONAL LIQUIDATOR OF IPTL..... 2nd RESPONDENT
3. THE BANK OF TANZANIA OF TANZANIA.....3RD RESPONDENT

DRAWN ORDER

The petitioner, VIP Engineering and Marketing Ltd (VIP) prayed for the following orders;

- (1) That this court marks the petition for winding up the Independent Power Tanzania Limited (IPTL) as duly withdrawn with no orders as to costs.
- (2) That the appointment of the Provisional Liquidator of IPTL be terminated.
- (3) That the Provisional Liquidator shall hand over all the affairs of IPTL, including the IPTL power plant to Pan Africa Power Solutions (T) Limited (PAP) which has committed itself to pay off all legitimate creditors of IPTL and to expand the plant capacity to about 500 MW and sale power to TANESCO at a tariff of between us cent 6 at 8 unit.
- (4) That parties are free to commence new independent claims in any court with competent jurisdiction against any party should they fail to reach amicable settlement out of court on any issue which arose in IPTL.
- (5) That the court has taken judicial notice of the agreement between VIP and PAP.

And the applicants, Law Associates Advocates. filed an application for the following reliefs;

- a. The withdrawal of the petition and the discharge/release of the Provisional Liquidator of IPTL should not be allowed before the applicants' debt, together with statutory interests as well as legal fees for representing VIP in the winding up proceedings is paid in full from the monies in the Escrow Account with the Bank of Tanzania (BOT).
- b. That the BOT may be restrained from releasing the monies from the Escrow Account to PAP or to any other person whatsoever till the applicants' debt and legal fees are fully paid from the said account.

- c. That the Provisional Liquidator of IPTL be restrained from handling over the affairs of IPTL to PAP or any other person whatsoever, till the applicants' debt and legal fees are fully paid from the monies in the Escrow Account.
- d. That, costs of the application be provided for.
- e. Any other order and or relief as this court may deem fit and appropriate in the circumstances.

And Mr. Malimi learned counsel for the Joint Liquidators of Mechamar Corporation (Malaysia) Berhad orally objected to the orders prayed by VIP.

And VIP, IPTL and the Provisional Liquidator of IPTL raised a preliminary objection against the application filed by Law Associates Advocates, and countered the objection raised by Mr. Malimi learned counsel,

WHEREAS THIS HONORABLE COURT, delivered the ruling on 5th day of September before John H.K. Utamwa, J. in the presence of Messers Ngalo and Kamala for VIP, Mr. Mnyele for Law Associates Advocates, Mr. Makandege for IPTL and the Provisional Liquidator and Mr. Mustafa Ismail for BOT,

THIS COURT DOTH HEREBY ORDERS THAT:

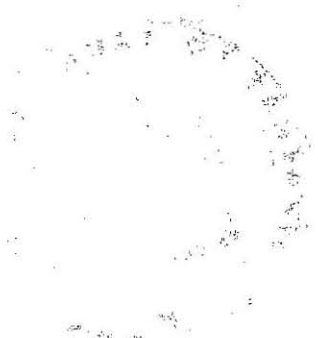
The preliminary objection raised against the application filed by Law Associates, Advocates is upheld, the application is struck out and each party shall bear his own costs. The oral objection raised by Mr. Malimi learned counsel is also turned down. On the other hand, all the orders prayed by VIP are hereby granted, and it is thus ordered as follows:


- (1) This Court marks the petition for winding up the IPTL as duly withdrawn with no order as to costs.
- (2) The appointment of the Provisional Liquidator is hereby terminated.
- (3) The Provisional Liquidator shall hand over all the affairs of IPTL including the IPTL Power Plant (the plant) to PAP, which has committed itself to pay off all legitimate Creditors of IPTL and to expand the plant capacity to about 500Mw and sell power to TANESCO at a Tariff of between US Cents 6 and 8/Unit in the shortest possible time after taking over in the public interests.
- (4) Parties are free to commence new independent claims in any Court with competent jurisdiction against any party should they fail to reach amicable settlement out of Court on any issue which arose in IPTL.
- (5) The Court has taken note of the agreement between VIP and PAP.

no mention
of escrow.

(6) IPTL shall as soon as possible consider paying Law Associates Advocates the undisputed claim of monies to honor the commitment by PAP as shown under the VIP prayer No. (3) herein above.

Given under my hand and the seal of court this ^{5th} day of ^{SEPTEMBER} 2013




J. H.K. UTAMWA
JUDGE